

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

MARZONO SHELLY,)	
)	
Petitioner,)	
)	
v.)	No. 2:21-cv-00025-JPH-MJD
)	
DICK BROWN,)	
)	
Respondent.)	

ORDER TO SHOW CAUSE

The petitioner's petition for writ of habeas corpus challenging his state court conviction in case number 46C01-1201-MR-031 was filed on January 11, 2021. Dkt. 1.

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that upon preliminary consideration by the district court judge, "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner."

The petitioner previously challenged this conviction in case number 2:18-cv-00499-JMS-DLP. That petition was denied. When there has already been a decision in a federal habeas action, to obtain another round of federal collateral review a petitioner requires permission from the Court of Appeals under 28 U.S.C. § 2244(b). This statute, § 2244(b)(3), "creates a 'gatekeeping' mechanism for the consideration of second or successive [habeas] applications in the district court." *Felker v. Turpin*, 518 U.S. 651, 657 (1996). It "'is an allocation of subject-matter jurisdiction to the court of appeals.'" *In re Page*, 170 F.3d 659, 661 (7th Cir. 1999) (quoting *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996)), opinion supplemented on denial of rehearing

en banc, 179 F.3d 1024 (7th Cir. 1999). Therefore, "[a] district court must dismiss a second or successive petition . . . unless the court of appeals has given approval for the filing." *Id.*

Here, the petitioner has previously sought federal habeas relief for the convictions at issue in his petition. There is no indication he sought permission from the Court of Appeals to pursue a successive petition. Therefore, the petitioner shall have **through February 16, 2021**, in which to show cause why his petition should not be dismissed as successive.

The petitioner shall have **through February 16, 2021**, to either pay the \$5.00 filing fee for this action or demonstrate his financial inability to do so.

SO ORDERED.

Date: 1/19/2021



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

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